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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 23

WILSON AND CO., INC., PETITIONER

v.

THE UNITED STATES

No. 24

WILSON & CO., INC., OF KANSAS, PETITIONER

v.

THE UNITED STATES

No. 25

T. M. SINCLAIR & COMPANY, LIMITED, PETITIONER

v.

THE UNITED STATES

ON WRITS OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court below (R. 11–15) is reported in 30 F. Supp. 672.

JURISDICTION

The judgment of the court below was entered December 4, 1939 (R. 15). On January 10, 1940, a motion for leave to file amended petitions was filed which was overruled on February 5, 1940 (R. 15). The petition for writs of certiorari was filed March 1, 1940 (R. 18), and granted April 22, 1940. The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether a processor who exported products on which it paid processing and floor stock taxes under the Agricultural Adjustment Act may sue for the recovery of export refunds in the Court of Claims.

STATUTES INVOLVED

The pertinent portions of the applicable statutes and regulations are set forth in the Appendix, *infra,* pp. 38–55.

STATEMENT

The court below decided these cases upon the petitions and motions to dismiss (R. 11). From the petition in No. 23,[1] the following facts appear (R. 1–3):

The petitioner prepares, packs, and sells hog products for foreign and domestic commerce (R. 1).

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[1] The facts in all three cases are almost identical, and we have confined our statement to those presented in No. 23.

Between November 5, 1933, and January 6, 1936, the petitioner exported, in its own name, large quantities of hog products to foreign countries, with respect to which it had paid processing taxes and floor stock taxes under Sections 9 (c) and 16 (a) of the Agricultural Adjustment Act (R. 1).

After exportation of the hog products, and prior to June 22, 1936, the effective date of the Revenue Act of 1936, the petitioner filed claims under Section 17 (a) of the Agricultural Adjustment Act for refund of processing and floor-stock taxes paid in the amount of $144,666.03. Each of these claims was rejected by the Commissioner of Internal Revenue (R. 2, 3) and suit was brought in the Court of Claims.

The Government moved to dismiss the petitions on the ground that the court was without jurisdiction because of the limitations of Title VII of the Revenue Act of 1936 (R. 10). The Court of Claims held that it was without jurisdiction, because Section 601 (e) of Title IV made the Commissioner's determination final, and dismissed the petition (R. 15).

SUMMARY OF ARGUMENT

I

Petitioners urge that their claims for export refunds arise under Section 17 (a) of the Agricultural Adjustment Act; the court below held that they are governed by Section 601 of Title IV of the Revenue Act of 1936; and we urge that these claims

can be presented only under Title VII of that Act, as a part of petitioners' claims for all taxes illegally collected.

A. Congress met the gigantic and complex tax refund problem created by *United States* v. *Butler*, 297 U. S. 1, by placing refunds to taxpayers under Title VII and refunds to exporters, to those who delivered to charities, and to those who held floor stocks on January 6, 1936, under Title IV. The processor-exporter, who without special provision might have fallen in either group, was placed in Title VII because: (1) it was desirable in Title VII to obtain as complete a picture as possible of his processing operations; (2) inclusion of processors who were liable for but who had not paid the taxes due in Title IV might have operated to give them refunds of unpaid taxes; and (3) there might otherwise have been doubts as to the propriety or validity of providing an exclusive administrative remedy for the refund of amounts collected as taxes.

B. Section 601 (a) reenacts Section 17 (a), but this reenactment is qualified by the provision of Section 601 (b) that no export refund shall be made to the processor who paid or was liable for the tax. This plain meaning of Section 601 (b) is confirmed by the committee reports and the regulations.

It is immaterial that, prior to the *Butler* decision, Section 17 was designed to aid exporters by

providing complete relief from the tax; Congress made its numerous amendments precisely because the Agricultural Adjustment Act provisions contemplated an operating tax program, not the intricate and carefully integrated tax-refund system found necessary in 1936. Neither fair dealing by Congress nor any constitutional doubt warrants petitioners' attempt to rewrite the statute.

C. Petitioners' only remedy is under Title VII, where provision is made for all the refund claims of processors; the court below concededly has no jurisdiction if this construction is correct. Title VII is less attractive to the petitioners, because they must show that they bore the burden of the tax, but there can be no question of its adequacy. *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337. Section 906 (a) in terms makes its procedures the exclusive remedy for amounts paid as processing taxes. Section 911, excepting from Title VII the export refunds authorized by Section 17 (a) "as amended and reenacted," does not save petitioners, for refund to them under Section 17 (a) is forbidden by Section 601 (b). The committee report makes this clear beyond dispute, and the regulations follow this interpretation.

II

The court below therefore erred in holding that petitioners' claims are covered by Section 601. But, if petitioners could somehow overleap the barrier of Section 601 (b), the court below was

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plainly right in holding that Section 601 (e), making the Commissioner's determination final, ousted it of jurisdiction to review his denial.

ARGUMENT

I

THE COURT OF CLAIMS IS WITHOUT JURISDICTION BECAUSE PETITIONERS' EXCLUSIVE REMEDY IS UNDER TITLE VII

The petitioners paid processing taxes and floor stocks taxes with respect to hog products which were exported by them prior to the invalidation of the Agricultural Adjustment Act in *United States* v. *Butler,* 297 U. S. 1.

Under Section 17 (a) of the Agricultural Adjustment Act, *infra,* the Commissioner was to refund to the exporter an amount equivalent to the tax. Section 601 of Title IV of the Revenue Act of 1936, *infra,* in subdivision (a) reenacted Section 17 (a), but in subdivision (b) provided that no refund under Section 601 should be made to the processor or other person who paid or was liable for the tax. Sections 902–911 of Title VII of the Revenue Act of 1936, *infra,* enacted a refund procedure for the recovery by the taxpayer of processing and floor stocks taxes paid.

There are, then, three different provisions under which it might be argued that the petitioners may claim reimbursement for the processing and floor-stocks taxes paid with respect to the

exported articles: (1) Petitioners urge that they come under Section 17 (a) of the Agricultural Adjustment Act [2] (Br. 14–29). (2) The court below held that they are included in Title IV of the 1936 Act (R. 12–14). (3) The Government argues that petitioners are within Title VII of the 1936 Act. The question in this case is simply which of the three procedures is applicable. The issue is narrow, but the difficulties which the lower courts have had suggest the desirability that the precise question be considered against the background of the general problem which Congress faced in 1936.

A. THE LEGISLATIVE PROBLEM IN 1936

The first processing tax under the Agricultural Adjustment Act became effective on July 9, 1933. In the succeeding 30 months over $960,000,000 was collected under that Act; another $237,000,000 was estimated to have been due but unpaid on January 6, 1936, when *United States* v. *Butler,* 297 U. S. 1, was decided.[3]

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[2] *Cudahy Bros. Co.* v. *LaBudde*, 92 F. (2d) 937 (C. C. A. 7th), certiorari denied, 303 U. S. 659, and *Neuss, Hesslein & Co., Inc.* v. *United States*, 30 F. Supp. 595 (S. D. N. Y.), so held, at least as Section 17 (a) was reenacted by Section 601.

[3] H. Rep. No. 2818, 74th Cong., 2d Sess., p. 2; S. Rep. No. 2156, 74th Cong., 2d Sess., p. 32; cf. testimony of Secretary Wallace, Hearings on Revenue Act of 1936 (H. R. 12395) before Senate Committee on Finance, 74th Cong., 2d Sess., p. 843.

Congress was faced with problems of unprecedented complexity in dealing with the refund procedures for this gigantic tax collection. The Agricultural Adjustment Act imposed a variety of taxes: processing taxes under Section 9, floor stocks taxes under Section 16, compensating taxes on imported products under Section 15 (e), compensating taxes on competing products under Section 15 (d), and taxes with respect to certain contracts, made before the effective date of the tax, under Section 18. It also provided for a number of tax refunds; those taxes which were paid with respect to articles exported to foreign markets, under Section 17 (a); those taxes paid with respect to articles delivered to charitable institutions, under Section 15 (c); those taxes found by the Secretary of Agriculture to be unduly burdensome, under Section 15 (a); and a floor stocks refund, under Section 16 (e), when the processing tax was decreased.

In general, the burden of the taxes had been shifted on to the consumer or back to the producer through correspondingly increased sales prices or decreased purchase prices,[4] but this could not be said to have been the invariable result. During the last ten months of the life of the tax, collections

[4] See Brief for Respondent in *Anniston Mfg. Co.* v. *Davis*, No. 667, October Term, 1936, pp. 83–91; *An Analysis of the Effects of the Processing Taxes*, prepared by Bureau of Agricultural Economics and published by the Bureau of Internal Revenue, 1937.

were with increasing frequency enjoined by court order. This added special complications with reference to claimants for export or charitable refunds who had purchased from the processor and who could typically be assumed to have borne the burden of the tax through higher prices even though the processor had not paid the tax to the Government.[5]

In the Revenue Act of 1936 Congress attempted to do substantial justice to each of these classes, and yet to withhold the refunds when their payment would amount to unjust enrichment. See *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, 351. And, in accomplishing these ends, it was forced to bear in mind the tremendous administrative task inherent in the refund problem.[6] A rather intricate pattern for making the tax refunds resulted.

The refund of taxes illegally collected was governed by Title VII. No refund was permitted except so far as the claimant could show that he bore the burden of the tax. Section 902. Floor stocks

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[5] The customary procedure was for the amount of the tax due to be paid into court during the life of the injunction; after *Rickert Rice Mills* v. *Fontenot*, 297 U. S. 110, the impounded funds were recovered by the taxpayers.

[6] The Congressional Committees estimated that more than 1,000,000 claims for refund of taxes would be presented, distributed as follows: $850,000,000 in processing taxes, paid by 73,000 taxpayers; $98,000,000 in floor stocks taxes, paid by 1,000,000 taxpayers; and $12,000,000 in compensating taxes, paid by 75,000 taxpayers. H. Rep. No. 2818, p. 2, and S. Rep. No. 2156, p. 32.

and compensating taxes were expected to produce a large number of claims in relatively small amount, and were expected to present rather simple issues in the inquiry whether the taxpayer bore or shifted the burden of the tax.[7] The ordinary provisions for suit in the district courts and in the Court of Claims were therefore retained. Section 905.[8] Processing tax refunds, on the other hand, were expected to present extremely complicated economic and accounting considerations; there was created, therefore, a Processing Tax Board of Review, in the Treasury Department, to have initial jurisdiction of petitions filed by claimants dissatisfied with the Commissioner's action.[9] Review of the Board's action would be had in the Courts of Appeals. Sections 906 and 907.

The scheme for refunds to others than taxpayers took a different form. These refunds were to be made to persons who exported or delivered to charities, as was done under the Agricultural Adjustment Act,[10] and also to persons who held floor stocks

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[7] H. Rep. No. 2818, p. 2; S. Rep. No. 2156, p. 33.

[8] In Section 910 it was provided that no Collector should be liable for collecting a tax under the Agricultural Adjustment Act. The $10,000 limitation on suits in the district courts against the United States was therefore removed in Section 905.

[9] H. Rep. No. 2818, p. 2; S. Rep. No. 2156, p. 33.

[10] Sections 15 (c) and 17 (a) of the Agricultural Adjustment Act. Sections 15 (a) and 16 (e) of that Act, which provided for refunds when the processing tax was reduced or suspended, were also preserved.

on January 6, 1936.[11] Since the claimants were not taxpayers, they would be asking for Congressional bounty rather than for the recovery of illegally collected taxes; the determination by the Commissioner of the amounts due them was therefore made final.[12] Sections 601 and 602.

The processor, who paid the tax, and who also exported the articles or delivered them for charitable use, presented a special difficulty, since his claim could be viewed as either a claim for an export or charitable refund or as a claim for a refund of taxes paid. But several considerations pointed to the desirability that these claims be presented under Title VII rather than under Title IV. In the first place, if an adequate examination of the incidence of the processing tax was to be made under Section 907, it was considered preferable so far as possible to look at the whole of the processor's operations, rather than to create added difficulties by attempting to segregate that processing which happened to result in articles which were exported

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[11] The floor stocks refund was designed to leave the persons who purchased before January 6, 1936, in an equal competitive situation with those who purchased tax-free thereafter. H. Rep. No. 2475, 74th Cong., 2d Sess., p. 15, S. Rep. No. 2156, p. 29.

[12] H. Rep. No. 2475, 74th Cong., 2d Sess., p. 14; S. Rep. No. 2156, p. 27. See *Swan & Finch Co.* v. *United States*, 190 U. S. 143, 146–147; *United States* v. *Allen*, 163 U. S. 499, 504; cf. *Campbell* v. *United States*, 107 U. S. 407, 413.

or delivered for charitable use.[13] In the second place, it was believed that a large number of exporters or persons who delivered for charitable use had borne the burden of the tax even though the processor, with the aid of court injunction, had not paid the tax. In the interests of justice, it was desirable to permit them to obtain refunds without proof that the tax was paid,[14] and Section 601 (b) removed that limitation. But plainly the processor, who may well have avoided payment of the tax, should not be included in these refund procedures which were designed for his customers.[15]

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[13] The Committees were anxious that "the complex tax picture" of the processor be presented in a single claim. H. Rep. No. 2818, p. 4; S. Rep. No. 2156, p. 35. When it was urged that the refund claims under Section 15 (a) of cotton processors who manufactured large cotton bags should be allowed under Title IV, the witness stated that the Bureau's administrative difficulties with other types of processor's claims did not exist under Section 15 (a). Hearings on Revenue Act of 1936 (H. R. 12395), Senate Committee on Finance, 74th Cong., 2d Sess., p. 446.

[14] See Senate Hearings, pp. 549–552, 833–834, 870, 943.

[15] The provision that refund should be made to the exporter or upon charitable delivery without proof of payment of the tax was included by the Senate Committee, which accordingly noted that the benefits of that provision would not extend to the only processors (of large cotton bags) able to claim under Section 601. S. Rep. No. 2156, p. 28. A similar provision with respect to floor stocks refunds had appeared in Section 602 of the bill as introduced in the House, from the benefits of which the processor was also excluded. H. Rep. No. 2475, pp. 15–16.

In the third place, it was not entirely clear that the exporter who was also a processor would be presenting a claim for a gratuitous benefit, instead of seeking recovery of taxes illegally collected. This would make Congress hesitant to include the processor in a procedure which made the Commissioner's determination final and prevented judicial review.[16]

We submit, therefore, that Congress considered the most feasible solution of the problem of the processor-exporter to require that he be treated as a processor rather than an exporter, and that the Revenue Act of 1936 produces the intended result. The succeeding sections will demonstrate this in detail.

B. PETITIONERS CANNOT OBTAIN A REFUND UNDER SECTION 17 (a) OR SECTION 601

1. Section 17 (a) of the Agricultural Adjustment Act, *infra*, provides:

> Upon the exportation to any foreign country * * * of any product * * * with respect to which * * * a tax has been paid or is payable under this title, the tax * * * shall be credited or refunded. * * * the credit or refund shall be allowed to the consignor named in the bill of lading * * *.

[16] H. Rep. No. 2475, p. 14; see H. Rep. No. 2818, p. 5; S. Rep. No. 2156, p. 36.

Section 17 (a) probably fell with the decision in *United States* v. *Butler*, 297 U. S. 1.[17] But whatever might have been the ultimate outcome of an inquiry into its continued vitality, Congress did not care to allow Section 17 (a) to remain without further action. Instead, it reenacted Section 17 (a), together with other refund provisions, in Section 601 (a) of the Revenue Act of 1936,[18] and in the succeeding subdivisions of Section 601 prescribed various conditions upon the refunds to be made under the reenacted provisions.

Section 601 (a) of the Revenue Act of 1936, *infra*, provides:

> The provisions of sections * * * 17 (a) of the Agricultural Adjustment Act, as amended, are hereby reenacted but only for the purpose of allowing refunds in accordance therewith in cases where * * * the exportation * * * took place prior to January 6, 1936.

If Section 601 (a) stood alone, it could be argued that petitioners could file their claim for an export

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[17] That case held invalid the tax provisions of the Agricultural Adjustment Act and the benefit payments authorized by that Act. The tax-refund provisions of a statute are certainly inseparably linked with the tax provisions, in the sense that Congress would not have enacted the refund provisions without the tax. And Congress demonstrably would not have desired to retain the export-refund provisions after invalidation of the tax (cf. *Kay* v. *United States*, 303 U. S. 1, 7), for in Section 601 it enacted various limitations designed to meet that new situation.

[18] This was in order "to remove doubts as to the legal authority of the Commissioner * * * to continue the

refund under, according to one's taste in denomination, either Section 17 (a) or Section 601.[19] But subdivision (a) does not stand alone. It is followed immediately by Section 601 (b), *infra*, which provides:

> Except for refunds under Section 15 (a) of the Agricultural Adjustment Act,[20] as reenacted herein, no refund under this section shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based. * * *

It is not easy to see how Congress could more clearly have excluded the processor from obtaining an export refund than by the provision that "no refund under this section shall be made to the processor or other person who paid or was liable for the tax". Yet petitioners urge, and two courts

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making of refunds" and to prescribe the conditions found in the subsequent subdivisions of Section 601. H. Rep. No. 2475, pp. 13–14; S. Rep. No. 2156, pp. 28–29. See Pet. Br. 16–17.

[19] The conclusion even on this hypothesis would by no means be certainly correct. If petitioners be viewed as processors rather than exporters, Title VII, provides an exclusive remedy. See *infra*, pp. 26–31.

[20] Section 15 (a) provided for refund of processing taxes after certification by the Secretary of Agriculture that a designated class of articles was of such low value, considering the quantity of the commodity used in its manufacture, that the processing tax would prevent its use in whole or large part. This provision was applied only with respect to large cotton bags. See Agricultural Adjustment, 1933–1935, U. S. Dept. Agriculture, p. 141.

have ruled, that a processor *can* obtain an export refund. *Cudahy Bros. Co.* v. *La Budde,* 92 F. (2d) 937 (C. C. A. 7th), certiorari denied, 303 U. S. 659. *Neuss, Hesslein & Co., Inc.* v. *United States,* 30 F. Supp. 595. None of the suggested grounds of escape from the language of Section 601 (b) has the slightest substance:

(a) The court below held, and petitioners urge (Br. 20), that Section 601 (b), in providing that "no refund under this section shall be made to the processor", means that no refund should be made to the processor who was not an exporter as well (R. 13). But Section 601 (b) covers *all* processors, and the decision below rewrites the statute. That construction, moreover, makes the provision into an idle redundance of Congress, for a processor who did not export could not possibly have obtained an export refund under Section 17 (a).

(b) The court in the *Cudahy* case held that Section 601 (b) could not mean what it said because this would contradict Section 601 (a), allowing export refunds (92 F. (2d) at 938–939). Petitioners agree (Br. 19). But Section 601 (a) relates to exporters generally, and Section 601 (b) to the exporter who has not purchased the exported article after processing but has instead processed the commodity and himself paid the tax. There is no more contradiction in these pro-

visions than in any particular exception to the general rule.

(c) Petitioners also suggest (Br. 19–20) a rather complicated operation on Section 601 (b) by which it would exclude only the refund claim of the processor-exporter who forsook his claims for an export refund and instead claimed under Title IV solely on the ground that the tax was illegally collected.[21] But Section 601 (b) excludes a refund to *all* processors, not merely to those hardy processors who choose to urge only their weaker grounds for claiming a refund under Title IV.

2. We do not see room for doubt as to the meaning of Section 601 (b). But it is significant that the Committee Reports show with equal clarity that Congress meant just what it said, and intended to permit the export refunds to be claimed only by those exporters who were not subject to the tax.

The House Committee said (H. Rep. No. 2475, 74th Cong., 2d Sess., p. 14):

> Section 601 (b) excludes from the benefits of the section the processor or other person who paid the tax with respect to the articles on which the claim is based, for the reason

[21] Petitioners, we think, ascribe an undue subtlety of approach to the *Cudahy* opinion when they state that the court reached a similar conclusion there (Br. 19). In truth, the *Cudahy* opinion seems to us to advance the startling proposition that Section 601 (b) was designed to forbid refunds even to processors who claimed under Title VII. 92 F. (2d) at 938–939.

> that the claims of such persons are within the provisions of section 21 (d) of the Agricultural Adjustment Act, as amended.[22]

The Senate Committee, while explaining the desirability for permitting the claims of processors of large cotton bags to be presented under Section 601, was as explicit as the House Committee that other processors could obtain refunds only under Title VII, and could not claim under Title IV. It said (S. Rep. No. 2156, 74th Cong., 2d Sess., p. 28):

> Your committee is of the opinion that the House bill should be amended by striking out section 601 (b) and substituting a new subsection. This provision of the House bill would deny the benefits of the section to any processor or other person who paid the processing tax with respect to the articles on which a claim is based. The amendment recommended by your committee would make an exception to this limitation in the case of refunds under section 15 (a) of the Agricultural Adjustment Act, as reenacted herein, to remove an inadvertent discrimination against a limited number of manufacturers of large cotton bags who are also processors of cotton yarn and to

[22] The provisions which became Title VII of the 1936 Act were not in the bill as it passed the House (H. R. 12395) but were then contained in a separate bill (H. R. 12793). In consequence, Section 21 (d) of the Agricultural Adjustment Act, which was later replaced by Title VII, at the time of this report contained the existing provisions for refund of processing taxes to those who had borne their burden.

> correct what would otherwise be an unfortunate competitive situation.
>
> The claims for refund of other processors are adequately provided for by title VII which your committee recommends be added as an amendment to the House bill. * * *

Section 602 provides for floor-stocks refunds for articles, with respect to which a processing tax was due or paid, which were on hand on January 6, 1936. This refund, designed to make whole a person to whom the burden of the tax had been shifted through higher prices and who would have to sell in a tax-free market, similarly excluded the processor from its benefits. Section 602 (a). The Committee Reports explain that here, as with the refunds directed by Section 601, the processing-tax refund provisions of Title VII were an adequate remedy for the processor. H. Rep. No. 2475, p. 15; S. Rep. No. 2156, p. 29.

The hearings show a consistent understanding that the processor-exporter would be unable to obtain an export refund. In the Senate hearings,[23] five witnesses protested the exclusion of the processor-exporter from Title IV by Section 601 (b);[24]

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[23] The House hearings (Hearings on Revenue Act of 1936, Ways and Means Committee, House of Representatives, 74th Cong., 2d Sess.) were held before the bill was introduced or its text known.

[24] J. W. Oliver, American Management Association (p. 215); Edward F. Howrey, Textile Bag Industry (pp. 444–446); John C. White, Standard Rice Co., pp. 796, 797); Herman Fakler, Millers' National Federation (p. 951); J. E.

no witness or committee member suggested that the processor-exporter would in fact be able to obtain an export refund.[25]

The Treasury Regulations, too, forbid the processor to file a claim for export refunds. T. D. 4671, XV–2 Cum. Bull. 424, Art. 1 (b), 1 (e) (2), *infra*; cf. Regulations 83, Art. 3 (a) (1) (D), as amended by Art. 6 of T. D. 4671, *supra*. The general rule as to the weight to be attached to a contemporaneous administrative construction is fully applicable in the field of export refunds. *Swan & Finch Co.* v. *United States,* 190 U. S. 143, 146; *National Lead Co.* v. *United States,* 252 U. S. 140, 145–146.

3. Explicit attention should perhaps be directed to a possible consequence of disregarding the prohibition of Section 601 (b) against granting export refunds to processors. On January 6, 1936, there were about $237,000,000 of processing taxes due but unpaid (*supra,* p. 7). Congress felt that it would be unjust to deny export refunds, even though no tax had been paid with respect to the article, presumably because the processor in most cases had nonetheless included its amount in the price charged the exporter. Section 601 (b); S. Rep. No. 2156, p. 28; cf. H. Rep. No. 2475, p. 16.

Edgerton, Southern States Industrial Council, Inc. (p. 955). Hearings on the Revenue Act of 1936 (H. R. 12395), Senate Committee on Finance, 74th Cong., 2d Sess.

[25] This general understanding would seem to make reference to the hearings a permissible aid to construction. Cf. *United States* v. *San Francisco,* 310 U. S. 16.

Under the decision of the court below, a processor may file a claim under Section 601. If this be correct, there might be a possibility that a processor who had not paid the tax could nevertheless file a claim for and obtain a refund equivalent to the amount of tax which he did not pay. The result would be shocking, and doubtless was not contemplated by the court below. This circumstance gives redoubled force to the rule that provisions for export refunds must be strictly construed against the claimant. *Swan & Finch Co.* v. *United States,* 190 U. S. 143, 146; *United States* v. *Allen,* 163 U. S. 499, 504.

4. Petitioners urge that this construction cannot be adopted because it would imply "a complete *volte face* by Congress" from its policy enacted during the preceding summer (Br. 14–15, 17–18, 21), and on this ground seek to explain away the clarity of the committee reports, one of which referred to the processor's former remedy under Section 21 (d) (Br. 21). Apart from the more basic consideration that Congress enacted Titles IV and VII of the Revenue Act of 1936 in the light of the supervening decision in *United States* v. *Butler,* 297 U. S. 1, petitioners' argument is pitched on the faulty premise that they could claim under Title IV if Section 21 (d) had not been replaced by Title VII. But Section 21 (d) was made inapplicable to "any refund * * * authorized by * * * section 17", and, as limited by Section 601 (b), Section 17

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does not authorize a refund to the processor-exporter.

5. Running throughout petitioners' argument is an appeal for a construction which would recognize the moral obligation of Congress to continue the export refunds on the faith of which they exported (Br. 2–11, 16, 17). The argument is irrelevant, since the Court's function is to construe legislation and not to assay its morality. Moreover, it proceeds upon a wholly mistaken premise.

We do not dispute that Congress, in enacting the Agricultural Adjustment Act, intended by Section 17 (a) to protect the American exporters, who would be seriously handicapped if they had to sell in a tax-free market products which included the amount of the processing tax in their price.[26] But that purpose has no relevance to the present issue.

During the normal operation of the processing tax provisions, the tax was collected from the processor and refunded to the exporter under Section 17 (a); alternatively, under Section 17 (b), *infra*, commodities could be processed in bond for ex-

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[26] The only Congressional Committee Report which mentions the purpose of Section 17 (a) states: "provision is made for refund of processing taxes with respect to exports, thereby continuing the present competitive situation of our products in foreign markets." H. Rep. No. 6, 73d Cong., 1st Sess., p. 6. Compare *Tide Water Oil Co.* v. *United States*, 171 U. S. 210, 216, 219; *Swan & Finch Co.* v. *United States*, *supra*, 146; 26 Op. A. G. 355, 359.

portation without the payment of the tax. So long as the normal tax collection machinery continued to operate, the exporter of course could expect relief from the processing tax through either subdivision of Section 17.

But that tax machinery had no application to the situation after the decision in *United States* v. *Butler,* 297 U. S. 1. Competing considerations had then come to the foreground. In place of an operating system of tax collection and export refunds, Congress was faced with the quite different problem of accomplishing both fair treatment for the taxpayer and protection for the Treasury after the tax machinery had been brought to a halt. The complicated tax refund problems which then arose required, as we have explained, that the processor-exporter be treated as a processor rather than as an exporter for the purpose of obtaining the refund. Otherwise a less complete picture of his operations would be obtained for the purposes of Section 907, there might be danger of refunds of taxes to processors who had not paid them, and it might have been objected that a purely administrative remedy was improper for amounts collected as taxes. (See *supra,* pp. 11–13.) The petitioners' argument seems to be that Congress was so determined to encourage foreign trade that, at a time when that trade would no longer be affected, it would dislocate its refund procedures simply to preserve the older mechanism of the export refunds

to processors. It is at best an improbable motive to ascribe to Congress, and is flatly contradicted by the language of the Act and the Committee Reports.[27]

There is nothing in this to violate the most sensitive standards of legislative fair dealing. If, as was probable, petitioners bore the burden of the processing tax with respect to their exported products (see Pet. Br. 3–8), this fact will permit recovery of the amount of the tax in their claims filed under Title VII. It is true that petitioners will be put to the inconvenience of including these amounts in their Title VII calculations, and that the accounting complications might be such as to preclude an absolute accuracy in that determination. But those inconveniences hardly amount to a breach of moral obligation and simply raise issues already decided by this Court. *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337.

6. Finally, petitioners invoke a constitutional doubt by which to justify their construction of Sec-

[27] *Thompson* v. *United States,* 142 U. S. 471, shows that the tax machinery is not to be dislocated simply because of a desire to encourage exportation. There an exporter of distilled spirits, who manufactured in bond for exportation, was held liable to internal revenue taxation on 1,065 gallons which evaporated after withdrawal from the warehouse and before exportation.

[28] No constitutional question was raised below or in the petition for a writ of certiorari. We assume, however, that a "constitutional doubt" may properly be considered as within the scope of the questions of statutory construction which are presented.

tion 601 (Br. 16, 24–29).[28] The argument is intricate and ingenious: Section 17 (a) is described as an offer, the exportation as an acceptance; the result is said to be a contract, and the refund claim beyond the power of Congress to destroy. The remedies offered by Title VII are put aside, since they relate to petitioners' claim for taxes paid and not to their claim (based upon the same payments) for export refunds. The argument has two fatal defects.

In the first place, the claim for an export refund is not a contract right. In *Campbell* v. *United States,* 107 U. S. 407, it is true, the Court held the Court of Claims had jurisdiction to entertain a suit to recover a drawback which the Secretary of the Treasury had refused to pay, in violation of the statute and his own regulations. It sustained jurisdiction on two grounds: (1) the suit was founded on a law of the United States, and (2) it arose on an implied contract (107 U. S. at 410–411).[29] The *Campbell* case was followed in *Durant* v. *United States,* 28 C. Cls. 356, 368 (1893), upon which petitioners also rely. But subsequent cases have made plain that the export refund is not a contract right but a gratuity. In *United States* v. *Allen,* 163 U. S. 499, the importer was refused a drawback when he re-ex-

[29] We have found no subesquent case which considers the jurisdictional problem. On principle, jurisdiction would seem to rest upon the ground that a suit for an export refund is based upon a law of the United States.

ported coal after repeal of a drawback statute.[30] The Court described (pp. 503–504) the drawback as "an exceptional privilege or exemption from the general operation of a law." In *Swan & Finch Co.* v. *United States,* 190 U. S. 143, 146, the Court resolved doubts against the claimant because the drawback was "a governmental grant of a privilege or benefit."

Petitioners' contention, in short, is that any taxpayer who has relied upon a tax exemption or deduction has a contractual right, protected by the Constitution, to its continuance. It is contradicted by the uniform and unquestionably valid practice of making income-tax statutes retroactive for varying periods of time, even though they reduce or deny deductions formerly available. See *Welch* v. *Henry,* 305 U. S. 134; *United States* v. *Hudson,* 299 U. S. 498, 500–501.

In the second place, if there were a contract right, it is not destroyed by the Revenue Act of 1936. Petitioners paid processing and floor stocks taxes on the exported products; they have, as they urge, two grounds for claiming a refund of each payment—the export refund and the recovery of taxes illegally collected. Either ground may be destroyed without ground for complaint by petitioners so long as the other remains. Their objection to the elimination of the export refund, then,

[30] Neither the opinion nor the record indicates whether the coal was imported during the life of the drawback statute.

is simply that Title VII, their remaining remedy, unconstitutionally requires them to show that they bore the burden of the tax. This contention has already been rejected by this Court. *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337.

C. PETITIONERS' ONLY REMEDY IS UNDER TITLE VII

Petitioners, then, cannot obtain an export refund under Section 17 (a) or under Section 601. But they are not remediless, for Title VII contains an elaborate procedure for refund of the taxes paid, whether as floor stocks or as processing taxes, with respect to the exported articles.[31] But, as petitioners recognize, the court below has no jurisdiction if their remedy is under Title VII.[32]

The remedy under Title VII may be less attractive to petitioners, in that they will have to show that they bore the burden of these taxes, in common with all other processing or floor stocks

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[31] Section 903, as amended by the Revenue Act of 1939, c. 247, Sec. 405, 53 Stat. 862, provides that Title VII claims must be filed prior to January 1, 1940. Petitioners would now be barred by limitation if their Title VII claims did not include the amounts paid with respect to the exported articles for which refunds are sought in this suit.

[32] No claim was filed after enactment of the Revenue Act of 1936. Sec. 903. The Commissioner has not denied that claim. Sec. 904. There is no showing that petitioners bore the burden of the taxes. Sec. 902. And, so far as the processing tax is concerned, the Commissioner's action has not been reviewed by the Processing Tax Board of Review; the prescribed procedure for review of the Board's action has not been followed; and the Court of Claims has no jurisdiction of those proceedings. Section 906.

taxes imposed on them.[33] But there can now be no question of its general adequacy. *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337.

The statutory mechanism is clear. Claims are to be filed under Section 903. The Commissioner, under Section 902, is authorized to allow the claim to the extent that the claimant bore the burden of the tax. In the case of floor stocks taxes, suit may be brought in the district courts or in the Court of Claims after denial by the Commissioner. Section 905. In the case of processing taxes, review of the Commissioner's action is before the Processing Tax Board of Review, with subsequent review in the federal Courts of Appeals and in this Court. Section 906. Section 907 creates an intricate series of presumptions by which to aid in determining whether the claimant bore the burden of the tax.

These provisions are plainly applicable and appropriate whether the taxpayer sold the articles in this country or exported them. Petitioners' assertion of their "fundamental inapplicability" rests only on their mistaken premise that their export refunds should in justice be allowed without proof of their bearing the burden (Br. 22–23).

Moreover, Section 906 (a) in terms makes its procedures the exclusive remedy for the refund of

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[33] Section 903 authorizes the Commissioner by regulation to prescribe the number of claims which may be filed by any person. By Articles 302 and 602 of Regulations 96, claimants are to file a single claim for all floor stocks taxes and a single claim for each commodity upon which processing taxes were paid.

amounts paid as processing taxes. The language is emphatic and unmistakable:

> Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. * * *

Petitioners, however, urge that their claims for export refunds of processing and floor-stocks taxes are not governed by Title VII. They rely only upon Section 911, which provides:

> The provisions of this title shall not apply to any refund authorized under the provisions of sections 15, 16, or 17 of the Agricultural Adjustment Act, as amended and reenacted, or with respect to any articles exported under the provisions of section 317 of the Tariff Act of 1930.[34] * * *

This provision cannot serve to remove petitioners' claims from the provisions of Title VII and to place them under Section 17 (a), because it excludes only those refunds authorized under that section "as amended and reenacted." It was reenacted by Section 601, which, we have shown,

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[34] Section 317 of the Tariff Act of 1930 is irrelevant here. It merely provides that tobacco delivered for consumption outside the country shall be deemed exportation within the meaning of the laws relating to the exportation without payment of duty or taxes.

excludes export refunds to processors. As reenacted, then, Section 17 does not authorize a refund to petitioners, and they therefore are not excluded by Section 911 from claiming under the provisions of Title VII.[35] Petitioner escapes this conclusion only by blurring the statutory language and stating that Section 911 "categorically" excludes claims for "export drawbacks" (Br. 18, 22).

The plain meaning of Section 911 is entirely confirmed by the Senate Committee Report.[36] It said (S. Rep. No. 2156, pp. 36–37):

> Section 911 also provides that the provisions of this title do not apply to export, charitable, and certain other refund claims, the adjustment of which is authorized by sections 15, 16, and 17 of the Agricultural Adjustment Act and section 601 of H. R. 12395. It is necessary to provide specifically that this title does not apply to such claims so that there will be no confusion between

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[35] The occasion for the quoted portion of Section 911 is found in the fact that the various conditions and procedures of Title VII might otherwise be held applicable to the refunds to others than taxpayers authorized by Sections 601 and 602. Section 902, for example, requires that the claimant show that he did not shift the burden of the tax and Sections 905 and 906 provide special procedures for refunds under Title VII. Section 911 ensures that these should not be applied to the export refunds authorized under Title IV.

[36] H. Rep. No. 2818, p. 6, contains only the first two sentences quoted from the Senate Report. The additional matter doubtless represents an answer to the protests made to the Senate committee because of the exclusion of the processor-exporter from the benefits of Title IV. See *supra*, p. 19.

> the provisions of this title and section 601 of H. R. 12395. It is not the intent of this section, however, to limit the rights of processors who have paid processing taxes on articles or commodities which they have themselves subsequently exported or delivered for charitable distribution or use to obtain refunds of such processing taxes subject to the requirements of this title, since such processors are, with one minor exception, not entitled to the benefits of section 601 of title IV.

Finally, Regulations 96 explicitly require that a single claim be filed under Title VII for *all* floor stocks taxes, or *all* processing taxes with respect to a given commodity. Articles 302, 602; see also also Articles 402 and 502; all *infra*.

We submit, therefore, that Section 601 (b) plainly excludes export refunds to those who paid the tax and that Title VII plainly includes those claims for refund in its scope. This conclusion is confirmed both by the committee reports and by the regulations with respect to both Title IV and Title VII.

II

EVEN IF PETITIONERS CAN CLAIM UNDER TITLE IV, THE COURT OF CLAIMS IS YET WITHOUT JURISDICTION

Petitioners do not urge that they can claim under Section 17 (a) of the Agricultural Adjustment Act without reference to Section 601 of Title IV. And, as the court below discovered, even if petitioners are able somehow to hurdle the barrier found in Section 601 (b) to recovery of an export refund by

a processor, they are impaled upon another limitation, found in Section 601.

Section 601 (e) provides, with unmistakable clarity, that—

> The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination.

Since the Commissioner has denied petitioners' claims for refund, it is entirely plain that the court below had no jurisdiction to reexamine that denial or to entertain petitioners' suits.

The House Committee report reflects this evident purpose of Congress.[37] It states (H. Rep. No. 2475, p. 14):

> Section 601 (e) makes the determination of the Commissioner of Internal Revenue with respect to any refund under this section final and not subject to judicial review, and section 601 (f) disallows any claim for interest with respect to claims for refund made under this section. It is the opinion of your committee that, while provision for the relief of claimants in the cases covered by this section should be made, the fact that the refunds will be made to persons other than those who paid or were liable for payment of the tax under the Agricultural Adjustment Act, as amended, and the present

[37] The Senate report does not discuss Section 601 (e), to which it proposed no amendment. See S. Rep. No. 2156, p. 28.

> doubt as to the legal status of these claims warrants the disallowance of interest and the withdrawal of any right to judicial review of the determinations of the Commissioner.

Petitioners, however, offer a variety of contentions by which to escape the unequivocal command of Section 601 (e). None has substance.

1. "The determination of the Commissioner", they say (Br. 31–34), means only his determination of conversion factors, facts and computations, and does not mean his determination of legal questions. This construction rewrites the statute. It also ignores the clause that "no court shall have jurisdiction to review such determination", which would be an inept provision if the court were to have jurisdiction and was simply directed to accept as final an undefined part of the rulings involved in the case. Finally, the contrast with Section 601 (d) is instructive, and shows that Congress knew how to draft a provision such as petitioners have in mind.[38]

2. Petitioners urge that a denial of the claim, because it should be presented under Title VII, is not "a determination under this section" (Br. 34).

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[38] Section 601 (d) provides:

"(d) In the absence of fraud, the findings of fact and the decision of the Commissioner of Internal Revenue upon the merits of any claim adjusted pursuant to this section and the mathematical calculation therein shall not be subject to review by any administrative or accounting officer, employee, or agent of the United States."

It is to be observed that the record does not show why the Commissioner denied the claim. But, in any event, a denial of a claim because it could not be presented under Section 601 is obviously a determination "with respect to any refund under this section", which "no court shall have jurisdiction to review".

3. Petitioners contrast the slightly more emphatic language of Section 906 (a), *infra*,[39] to show that Congress in Section 601 (e) did not really intend to oust the courts of jurisdiction. The two provisions, however, had a different legislative origin[40] and differences in language are to be expected. In any event, in Section 906 (a) Congress was taking cognizance of the many suits then outstanding for the recovery of processing taxes, and felt it necessary specifically to exclude pending cases.[41] No such problem was presented in Title IV.

4. Petitioners urge that their construction of Section 601 (e) is supported by some ten decisions

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[39] Section 906 (a) provides:

"Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. * * *"

[40] Title IV was in the Revenue Bill of 1936 (H. R. 12395) as it passed the House; Title VII passed the House a month later as a separate bill (H. R. 12793).

[41] The Senate Committee on Finance estimated their number as in excess of 200. S. Rep. No. 2156, p. 33.

construing similar statutes (Br. 35–37). None supports the assertion. In none was there involved a statute ousting the courts of jurisdiction, as does Section 601 (e).[42] Indeed, only two of the cases involved a statute which in terms made the administrative determination final; in each of these cases the Court, even in the absence of a statutory ouster of jurisdiction such as is founed in Section 601 (e), affirmed a judgment dismissing for want of jurisdiction.[43]

5. Petitioners advance a presumption that Congress has not intended to nullify existing rights (Br. 38). The remedies under Title VII, of course, are not a nullity. Even if they were, petitioners' presumption would at least be matched by other rules of construction: the doctrines that a clear consent is necessary to sue the United States and that doubts are to be resolved against one claiming a gratuity.

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[42] See, in addition to the cases cited in note 43, *Dismuke* v. *United States*, 297 U. S. 167; *United States* v. *Laughlin*, 249 U. S. 440; *Medbury* v. *United States*, 173 U. S. 492; *McLean* v. *United States*, 226 U. S. 374; *United States* v. *MacVeagh*, 214 U. S. 124; *United States* v. *Hvoslef*, 237 U. S. 1; *Lloyd Sabaudo Societa* v. *Elting*, 287 U. S. 329; *United States* v. *Compagnie Generale Transatlantique*, 26 F. (2d) 195 (C. C. A. 2d).

[43] *United States* v. *Williams*, 278 U. S. 255; *Silberschein* v. *United States*, 266 U. S. 221. Petitioner relies on these cases solely because of a suggestion advanced in dictum that the administrative determination was final "*at least* unless it be wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious." (278 U. S. at 257–258; see 266 U. S. at 225; italics added.)

6. Finally, petitioners urge that our construction is contrary to the policy of Congress, as shown by Title VII, to allow taxpayers judicial review (Br. 38–39). In making this argument they reverse their former contention that they claim not as taxpayers but as exporters (see Br. 25–26). The statute, of course, evidences a clear policy to place refunds to taxpayers under Title VII, and gratuitous payments to others under Title IV [44] (*supra*, pp. 9–11). If petitioners should somehow succeed in having themselves placed in Title IV, they cannot at the same time urge that their remedies are to be construed as though they were taxpayers claiming under Title VII.

We submit, therefore, that even if petitioners could somehow present their claims under Section 17 (a) or Section 601, the court below would still be without jurisdiction.

CONCLUSION

For these reasons, we respectfully submit that the Court of Claims was without jurisdiction to en-

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[44] Congress felt justified in excluding judicial review under Title IV because the refunds were being authorized "to persons other than those who paid or were liable for payment of the tax" and because of the doubts as to the legal status of the claims after *United States* v. *Butler*, 297 U. S. 1. H. Rep. No. 2475, p. 14.

tertain these suits, and its judgment should be affirmed.

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APPENDIX

Agricultural Adjustment Act, c. 25, 48 Stat. 31, as amended by Secs. 12 and 13 of the Act of May 9, 1934, c. 263, 48 Stat. 670, and by Section 28 of the Act of August 24, 1935, c. 641, 49 Stat. 750:

> SEC. 17 (a). Upon the exportation to any foreign country (and/or to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam) of any product processed wholly or partly from a commodity with respect to which product or commodity a tax has been paid or is payable under this title, the tax due and payable or due and paid shall be credited or refunded. Under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, the credit or refund shall be allowed to the consignor named in the bill of lading under which the product is exported or to the shipper or to the person liable for the tax provided the consignor waives any claim thereto in favor of such shipper or person liable for the tax. In the case of rice, a tax due under this title which has been paid by a tax-payment warrant shall be deemed for the purposes of this subsection to have been paid; and with respect to any refund authorized under this section, the amount scheduled by the Commissioner of Internal Revenue for refunding shall be paid, any provision of law notwithstanding. In the case of sugar beets and sugarcane, this subsection shall be applicable to exports

of products thereof to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam only if this title with respect to sugar beets and sugarcane is not made applicable thereto. The term "product" includes any product exported as merchandise, or as a container for merchandise, or otherwise.

(b) Upon the giving of bond satisfactory to the Secretary of the Treasury for the faithful observance of the provisions of this title requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any commodity with respect to which a tax is imposed by this title, or to hold for such exportation any article processed wholly or partly therefrom. (U. S. C., Title 7, sec. 617.)

SEC. 21 (d) (1). No recovery, recoupment, set-off, refund, or credit shall be made or allowed of, nor shall any counterclaim be allowed for, any amount of any tax, penalty, or interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless, after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or

passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

Revenue Act of 1936, c. 690, 49 Stat. 1648:

TITLE IV.—EXPORT, CHARITABLE, ETC., REFUNDS AND FLOOR STOCKS ADJUSTMENT UNDER AGRICULTURAL ADJUSTMENT ACT

SEC. 601. REFUNDS UNDER AGRICULTURAL ADJUSTMENT ACT ON EXPORTS, DELIVERIES FOR CHARITABLE DISTRIBUTION OR USE, ETC.

(a) The provisions of sections 10 (d), 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), and 17 (a) of the Agricultural Adjustment Act, as amended, are hereby reenacted but only for the purpose of allowing refunds in accordance therewith in cases where the delivery for charitable distribution or use, or the exportation, or the manufacture of large cotton bags, or the decrease in the rate of the processing tax (or its equivalent under section 16 (e) (3)), took place prior to January 6, 1936.

(b) Except for refunds under section 15 (a) of the Agricultural Adjustment Act, as reenacted herein, no refund under this sec-

tion shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based. No refund under this section shall be allowable to any person with respect to any articles where such person prior to January 6, 1936, paid an amount as tax under the Agricultural Adjustment Act, as amended, by taking as a credit against such amount an amount otherwise allowable as a refund with respect to such articles under sections 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), or 17 (a) of said Act. No refund under this section shall be allowed to any person except to the extent that he establishes that he has not received, and is not entitled to receive, reimbursement of such amount from the processor or other vendor with respect to the articles on which the claim is based. No claim under this section (except claims of processors under section 15 (a)) shall be disallowed on the ground that the tax with respect to the article or the commodity from which processed has not been paid.

(c) No refund under this section shall be made unless the claimant files a claim therefor prior to January 1, 1937, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, and no claim shall be allowed in an amount less than $10. Sections 16 (g) and 21 (f) of the Agricultural Adjustment Act, as amended, are repealed.

(d) In the absence of fraud, the findings of fact and the decision of the Commissioner of Internal Revenue upon the merits of any claim adjusted pursuant to this section and the mathematical calculation therein shall not be subject to review by any ad-

ministrative or accounting officer, employee, or agent of the United States.

(e) The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination.

(f) No interest shall be allowed in connection with any refund made under this section.

(g) Section 16 (e) (1) of the Agricultural Adjustment Act, as reenacted by subsection (a) of this section, is amended by striking out "subsequent to June 26, 1934" and by inserting in lieu thereof "on or after June 1, 1934". (U. S. C., Supp. V, Title 7, Sec. 641.)

SEC. 602. FLOOR STOCKS AS OF JANUARY 6, 1936.

(a) There shall be paid to any person who, at the first moment of January 6, 1936, held for sale or other disposition (including manufacturing or further processing) any article processed wholly or in chief value from a commodity subject to processing tax, an amount computed as provided in subsection (b), except that no such payment shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based.

(b) The amount of the payment under subsection (a) shall be equal to the processing tax which would have been payable with respect to the commodity from which the article was processed, if it had been processed on January 5, 1936, but not in excess of (1) the amount of the burden of the tax with respect to the article which was shifted to the claimant in the price he paid

for the article (to the extent that the claimant has not received and is not entitled to receive reimbursement for such burden from the processor or other vendor) and not in excess of (2) the amount of that part of the burden of the tax applicable to the articles held on January 6, 1936, which the claimant has not passed on to his vendees and has not included in the sale price of such articles. (U. S. C., Supp. V, Title 7, Sec. 642.)

* * * * *

(h) In the absence of fraud the findings of fact and the decision of the Commissioner upon the merits of any claim under this section, and the mathematical calculation therein shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

(i) The determination of the Commissioner with respect to any payment under this section shall be final and no court shall have jurisdiction to review such determination.

(j) No interest shall be allowed in connection with any payment made under this section.

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TITLE VII—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT

SEC. 901. REPEALS.

Sections 21 (d), 21 (e), and 21 (g) of the Agricultural Adjustment Act, as amended, are hereby repealed. (U. S. C. Supp. V, Title 7, Sec. 623 note.)

SEC. 902. CONDITIONS ON ALLOWANCE OF REFUNDS.

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any

claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever.

(U. S. C. Supp. V, Title 7, Sec. 644.)

SEC. 903. FILING OF CLAIMS.

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to January 1, 1940, a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claims shall be clearly set forth under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act, and such regulations may require that claims for refund of processing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes. (As amended by Sec. 405 of the Revenue Act of 1939, c. 247, 53 Stat. 862; U. S. C., Supp. V, Title 7, Sec. 645.)

SEC. 904. STATUTE OF LIMITATIONS.

Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of enactment of this Act, shall be brought or maintained in any court for the recovery, recoupment, set-off, refund, or credit of, or counterclaim for, any amount paid by or collected from any person as tax (except processing tax, as defined herein) under the Agricultural Adjustment Act (a) before the expiration of eighteen months from the date of filing a claim therefor under this title, unless the

Commissioner renders a decision thereon within that time, or (b) after the expiration of two years from the date of mailing by registered mail by the Commissioner to the claimant a notice of disallowance of that part of the claim to which such suit or proceeding relates. Any consideration or any action by the Commissioner with respect to such claim following the mailing of notice of disallowance shall not operate to extend the period within which any suit or proceeding may be brought.

SEC. 905. JURISDICTION OF COURTS.

Concurrent with the Court of Claims, the District Courts of the United States (except as provided in section 906 of this title) shall have jurisdiction of cases to which this title applies, regardless of the amount in controversy, if such district courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy. The United States Customs Court shall not have jurisdiction of any such cases. (U. S. C., Supp. V, Title 7, Sec. 647).

SEC. 906. PROCEDURE ON CLAIMS FOR REFUNDS OF PROCESSING TAXES.

(a) Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. The Commissioner shall allow or disallow, in whole or in part, any claim for refund of any such amount within three years after such claim was filed,

unless such time has been extended by written consent of the claimant.

(b) There is hereby established in the Treasury Department a Board of Review (hereinafter referred to as "the Board"). The Board shall be composed of nine members who shall be officers or employees of the Treasury Department designated by the Secretary of the Treasury. * * *

* * * * * *

(g) A review of the decision of the Board, made after the hearing provided in this section, may be obtained by the claimant or Commissioner by filing a petition for review in the Circuit Court of Appeals of the United States within any circuit wherein such claimant resides, or has his principal place of business, or, if none, in the United States Court of Appeals for the District of Columbia, or any such court which may be designated by the Commissioner and the claimant by stipulation in writing, within three months after the date of the mailing to the claimant and the Commissioner of the copy of the findings and decision of the Board. * * *

(U. S. C. Supp. V, Title 7, Sec. 648.)

SEC. 907. EVIDENCE AND PRESUMPTIONS.

(a) Where the refund claimed is for an amount paid or collected as processing tax, as defined herein, it shall be prima-facie evidence that the burden of such amount was borne by the claimant to the extent (not to exceed the amount of the tax) that the average margin per unit of the commodity processed was lower during the tax period than the average margin was during the period before and after the tax. If the average margin during the tax period was not lower, it shall be prima-facie evidence

that none of the burden of such amount was borne by the claimant but that it was shifted to others.

(b) The average margin for the tax period and the average margin for the period before and after the tax shall each be determined as follows:

(1) *Tax Period.*—The average margin for the tax period shall be the average of the margins for all months (or portions of months) within the tax period. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month and deduct the processing tax paid with respect thereto. The sum so ascertained shall be divided by the total number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(2) Period Before And After The Tax.—The average margin for the period before and after the tax shall be the average of the margins for all months (or portions of months) within the period before and after the tax. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month. The sum so ascertained shall be divided by the number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(3) Average Margin.—The average margin for each period shall be ascertained in the same manner as monthly margins under

subdivisions (1) and (2), using total gross sales value, total cost of commodity processed, total processing tax paid, and total units of commodity processed during such period.

* * * * *

(e) Either the claimant or the Commissioner may rebut the presumption established by subsection (a) of this section by proof of the actual extent to which the claimant shifted to others the burden of the processing tax. * * *

* * * * *

(U. S. C. Supp. V, Title 7, Sec. 649.)

SEC. 911. INAPPLICABILITY TO CERTAIN REFUNDS.

The provisions of this title shall not apply to any refund authorized under the provisions of sections 15, 16, or 17 of the Agricultural Adjustment Act, as amended and reenacted, or with respect to any articles exported under the provisions of section 317 of the Tariff Act of 1930. No refund shall be made or allowed of any amount paid or collected as tax under the Agricultural Adjustment Act, as amended and reenacted, to the extent that refund or credit with respect to such amount has been made to any person. (U. S. C. Supp. V, Title 7, Sec. 653.)

* * * * *

SEC. 913. DEFINITIONS.

When used in this title—

(a) The term "tax" means a tax or exaction denominated a "tax" under the Agricultural Adjustment Act, and shall include any penalty, addition to tax, additional tax, or interest applicable to such tax.

(b) The term "processing tax" means any tax or exaction denominated a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid

or collected a tax with respect to the processing of a commodity for a customer for a charge or fee.

* * * * *

(U. S. C. Supp. V, Title 7, Sec. 655.)

A. A. A. Refund Regulations Relating to Refunds on Exports, Deliveries for Charitable Distribution or Use (T. D. 4671, XV–2 Cum. Bull. 424):

ARTICLE 1. *General provisions applicable to claims.*—The following general provisions are applicable with respect to claims for refund under these regulations:

(a) Claims for refund will be allowed only in cases where the delivery for charitable distribution or use, the exportation, the manufacture of large cotton bags, or the decrease in the rate of the processing tax (or its equivalent under section 16 (e) (3)) took place prior to January 6, 1936.

(b) No refund (except refunds under section 15 (a) of the Agricultural Adjustment Act) will be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based. "Processor or other person who paid or was liable for the tax" means any person, who, under the Agricultural Adjustment Act, as amended, paid, or incurred liability for but did not pay, processing tax with respect to the commodity from which the article was made, or floor stocks tax or compensating tax with respect to the article or the material from which the article was made.

(c) No refund will be made to any person with respect to any article included in a claim under these regulations, if such person, prior to January 6, 1936, paid an amount as tax under the Agricultural Ad-

justment Act, as amended, by taking as a credit against such amount, an amount otherwise allowable as a refund with respect to such article. Credit includes any amount, otherwise allowable as a refund under sections 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), or 17 (a) of the Agricultural Adjustment Act, as amended, which was deducted from an amount due as tax under that Act.

(d) Every person who files a claim under these regulations shall submit with the claim, proof satisfactory to the Commissioner that with respect to the amount claimed he has not received, and is not entitled to receive, reimbursement of such amount, or any part thereof, from the processor of the commodity from which the articles were derived, or other vendor with respect to the articles on which the claim is based.

If any claimant has entered into an agreement, whether oral or written, with the processor or other vendor of such articles, under the provisions of which the claimant has received, or is entitled to receive reimbursement of all or any part of the tax with respect to such articles, then the amount of refund allowable is limited to the amount with respect to which he is not so entitled to reimbursement.

(e) (1) No claim (except claims of processors under section 15 (a) of the Agricultural Adjustment Act) will be disallowed on the ground that the tax with respect to the article on which the claim is based (or the commodity from which such article was processed) has not been paid.

(2) Each claim shall show, with respect to the articles on which the claim is based, that the claimant is not the processor or

other person who paid or was liable for the tax, except that in the case of claims of processors under section 15 (a) of the Agricultural Adjustment Act, the claim shall show (1) the name and address of the person who paid the tax, (2) the kind of tax paid, (3) if processing tax was paid, the month and year of such processing, (4) the date of payment, and (5) the internal-revenue district in which paid.

(f) No claim for refund will be allowed unless such claim shall have been filed by the person entitled thereto prior to January 1, 1937, and no refund will be allowed in an amount less than $10.

(g) No interest will be allowed in connection with any refund allowed pursuant to section 601 of the Revenue Act of 1936.

* * * * *

ART. 6. *Refunds under section 17 (a) of the Agricultural Adjustment Act, as amended, with respect to articles exported.*—(a) The provisions of Regulations 83 (September, 1934, Edition), insofar as not consistent with Article 1 of these regulations, are hereby made applicable in cases of claims for refund with respect to products exported.

(b) Article 3 (a) of Regulations 83 (September, 1934, Edition), is hereby amended to read as follows:

"ART. 3. *Claim for refund.*—(a) (1) *Who may file claim.*—

"A. The *consignor* named in the bill of lading under which the product is exported shall be entitled to make claim for refund unless he shall have waived such right to the shipper. *Consignor named in the bill of lading* means the person named in the bill

of lading as the person from whom the carrier received the product for shipment.

"B. The *shipper,* if other than the consignor named in the bill of lading, shall be entitled to make claim for the refund only if the consignor shall have waived any claim to such refund to him. In such case, the term *shipper* means the person for whom the consignor named in the bill of lading is handling the product for shipment.

"C. Where the product was not exported under a bill of lading, the person who owned the product at the time of exportation shall be entitled to make claim for refund, and a waiver may not be used.

"D. No refund will be made to the processor or other person who paid or was liable for the tax with respect to the products exported.

"(2) The claim for refund shall be executed by the claimant on the prescribed form, P. T. Form 27, revised, in accordance with the instructions contained thereon, and in accordance with these regulations. The claim must be filed with the collector for the district in which is located the principal place of business of the claimant. If the claimant has no principal place of business in the United States, the claim must be filed with the collector at Baltimore, Md. One claim may cover a number of export shipments."

Treasury Regulations 96, relating to Claims for Refund in Title VII of the Revenue Act of 1936:

ART. 302. Limitation as to number of claims.—Only one claim shall be filed by any

person for refund of floor stocks taxes. The claimant shall include in such claim the total amount of refund claimed with respect to the total amount of all floorstocks taxes paid by him.

If the claimant paid floorstocks tax with respect to more than one commodity, the total amount of refund claimed out of the total floorstocks taxes paid with respect to all commodities shall, nevertheless, be set forth in one claim. For example, if the claimant paid the cotton floorstocks tax, the wheat floorstocks tax, and the tobacco floorstocks tax, he shall include in one claim the total amount of the refund sought out of the total amount of floorstocks taxes paid by him with respect to cotton articles, wheat articles, and tobacco articles, and shall not file three separate claims.

* * * * *

ART. 402. Limitation as to number of claims.—Separate claims shall be filed with respect to the compensating tax paid on articles imported through each customs port of entry, and importations made through one customs port of entry shall not be included in the same claim with importations made through another customs port of entry. The claimant may include in a single claim compensating tax paid with respect to a number or all of the importations he has made through the same customs port of entry.

* * * * *

ART. 502. Limitation as to number of claims.—A separate claim shall be filed with respect to each commodity processed. Only one claim shall be filed by any person with

respect to the total amount paid by such person as "custom processing tax" on the processing of a single commodity.

* * * * *

ART. 602. Limitation as to number of claims.—A separate claim shall be filed with respect to each commodity on the processing of which the claimant paid processing tax. In the case of tobacco, all market classifications of tobacco shall be considered a single commodity and, therefore, there shall be included in one claim all of the market classifications of tobacco on the processing of which the claimant paid processing tax. Only one claim shall be filed by any person with respect to the total amount paid by such person as processing tax on the processing of a single commodity (or of all market classifications of tobacco).

U. S. GOVERNMENT PRINTING OFFICE: 1940

SUPREME COURT OF THE UNITED STATES.

Nos. 23, 24, 25.—October Term, 1940.

23	Wilson & Co., Inc., Petitioner, *vs.* United States, Respondent.	On Writs of Certiorari to the United States Court of Claims.
24	Wilson & Co., Inc., of Kansas, Petitioner, *vs.* United States, Respondent.	
25	T. M. Sinclair & Co., Ltd., Petitioner, *vs.* United States, Respondent.	

[November 18, 1940.]

Mr. Justice Murphy delivered the opinion of the Court.

Petitioners are corporations engaged in the preparation, packing, and sale of meat products in foreign and domestic commerce. Between November 5, 1933 and January 6, 1936 they exported to foreign countries large quantities of hog products with respect to which they paid processing taxes under Section 9(a) and floor stock taxes under Section 16(a) of the Agricultural Adjustment Act. 48 Stat. 31, 35, 40. Subsequent to exportation petitioners filed claims for refunds under Section 17(a). 48 Stat. 31, 40. The Commissioner of Internal Revenue denied all of the claims and suit in the Court of Claims followed. The United States thereupon moved to dismiss the petitions on the ground that the Court of Claims was without jurisdiction because of certain provisions of Title VII of the Revenue Act of 1936. 49 Stat. 1648, 1747-1755. The Court of Claims dismissed the actions for want of jurisdiction, on the ground, however, that Section 601(e) of Title IV of the Revenue Act of 1936, 49 Stat. 1648, 1740, prevented judicial review of the Commissioner's action. 30 F. Supp. 672. To resolve the conflict with *Cudahy Bros. Co.* v. *LaBudde*, 92 F. (2d) 937, and *Neuss, Hesslein & Co., Inc.* v. *United States*, 30 F. Supp. 595, we granted certiorari. 309 U. S. 651.

The single question presented is whether the Court of Claims was without jurisdiction of petitioners' suits. We hold that it was.

Title VII conditions payment of refunds upon proof that the claimant actually bore the burden of the tax sought to be refunded or that he unconditionally repaid it to his vendee who bore the burden. Since petitioners do not allege satisfaction of these conditions it is plain that they do not claim under Title VII. Indeed, they disown any attempt to bring their claims within its provisions.

Title IV provides for refunds to exporters of products upon which processing or floor stock taxes have been paid. It is true that Section 17(a) of the Agricultural Adjustment Act provided for these refunds before the Act was held unconstitutional in *United States* v. *Butler,* 297 U. S. 1. Whether petitioners could still establish refund claims under that section if the act had never been invalidated is a question we need not consider. For whatever the effect of that decision on Section 17(a), Congress expressly made it a part of Title IV by reenacting it in Section 601(a). 49 Stat. 1648, 1739.[1] It follows that petitioners' claims, purportedly based on Section 17(a), must be governed by Title IV and the limitations it imposes.

Section 601(e) of Title IV provides:

"The determination of the Commissioner of Internal Revenue with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination."

Petitioners contend that Congress intended to commit to the final determination of the Commissioner only "such matters as findings of fact, computations, and the like". Quite apart from the fact that in Section 601(d)[2] Congress uses virtually the quoted words in limiting review by administrative officers, we fail to see how the argument can aid petitioners here because the record does not show why their claims were denied. Since the record is silent on this point, such decisions as *United States* v. *Williams,* 278 U. S.

[1] Sec. 601. (a) The provisions of sections . . . 17(a) of the Agricultural Adjustment Act, as amended, are hereby reenacted but only for the purpose of allowing refunds in accordance therewith in cases where . . . the exportation . . . took place prior to January 6, 1936.

[2] Sec. 601. (d) In the absence of fraud, the findings of fact and the decision of the Commissioner of Internal Revenue upon the merits of any claim adjusted pursuant to this section and the mathematical calculation therein shall not be subject to review by any administrative or accounting officer, employee, or agent of the United States.